



BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

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BOARD MEETING MINUTES

THURSDAY, FEBRUARY 24 AND FRIDAY, FEBRUARY 25, 2000
SHERATON NEWPORT BEACH
NEWPORT BEACH, CALIFORNIA

Thursday, February 24, 2000

Board Members Present: George Shambeck (President), Kathy Hoffman (Vice-president), Gregg Brandow, David Chen, Vincent DiTomaso, Ted Fairfield, James Foley. Andrew Hopwood, Steve Lazarian, Myrna Powell, Millicent Safran, Quang Vu.

Board Members Absent: Marilyn Lyon

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Deputy Attorney General), Kevin Schunke (Special Assistant to the Executive Officer), Nancy Eissler (Attorney General Liaison Analyst), Jacqueline Barclay (Executive Analyst), Howard Brunner (Land Surveyor Consultant), Ignacio Lopez-Alvarez (Senior Engineering Registrar).

Public Present: Tom Stout, Richard Ray, CLSA; Monique Sidaross, PEGG; Tony Spillani; Carroll Witter

1. Roll Call to Establish a Quorum
The Meeting was called to order by President Shambeck at 4:10 p.m. Roll Call was taken and a quorum was established.
2. Public Comment
President Shambeck asked for public comment. No comments were made.
3. Closed Session
The Board went into Closed Session.

The Board recessed at 5:05 p.m.

Friday, February 25, 2000

Board Members Present: George Shambeck (President), Kathy Hoffman (Vice-President), Gregg Brandow, Vincent DiTomaso, Ted Fairfield, James Foley,

Andrew Hopwood, Steve Lazarian, Myrna Powell, Millicent Safran, Quang Vu.

David Chen arrived at 9:04 a.m.

Board Members Absent: Marilyn Lyon

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Deputy Attorney General), Kevin Schunke (Special Assistant to the Executive Officer), Nancy Eissler (Attorney General Liaison Analyst), Jacqueline Barclay (Executive Analyst), Howard Brunner (Professional Land Surveyor Consultant), Ignacio Lopez-Alvarez (Senior Engineering Registrar).

Public Present: Tom Stout, Richard Ray, CLSA; Monique Sidaross, PEGC; Tony Spillani; Carroll Witter

1. Roll Call to Establish a Quorum.
President Shambeck called the meeting to order at 9:02 a.m. Roll Call was taken and a quorum was established.

3. Closed Session
The Board went back into Closed Session.

2. Public Comment

Ms. Monique Sidaross, a representative from PEGC, made comments on behalf of PEGC members.

4. Open Session to Announce the Results of Closed Session

The Board approved the cutscore of 440 out of a possible 924 for the 10/99 Geotechnical examination. The Board approved the cutscore of 714 out of a possible 1405 for the 10/99 Structural examination. The Board approved a cutscore of 63 out of a possible 112 for the 10/99 Traffic examination.

The Board adopted the Stipulation in the Matter regarding Levi Rodriguez.

The Board adopted the Default Decision and Order in the Matter regarding Thomas Tice.

The Board adopted the Proposed Decision in the Matter regarding James Sanders.

The Board non-adopted the Proposed Decision in the Matter regarding Hans Thern.

The Board adopted the Proposed Decision in the Matter regarding Donald Jaragosky.

The Board discussed Examination Development issues.

The Board discussed pending litigation as noticed on the agenda

5. Approval Of Consent Items

MOTION: Ms. Hoffman/Mr. Vu moved to approve the consent items.

President Shambeck requested a correction be made to the December 16 minutes, page 17, paragraph 5. President Shambeck stated that the sentence begins with a statement from Mr. Fairfield. However, Mr. Fairfield was not in attendance.

VOTE: 12-0, motion carried.

6. Approval of Delinquent Reinstatements

MOTION: Mr. Hopwood/Dr. Brandow moved to approve Mr. Floyd Keneipp's application for reinstatement as an Industrial Engineer provided he take and pass the "take home" examination and pay current and delinquent renewal fees.

Ms. Hoffman stated that the recommendation and decision should be corrected to state that he is authorized to use the title of Industrial Engineer, not to practice industrial engineering.

VOTE: 12-0, motion carried.

MOTION: Ms. Hopwood/Mr. Lazarian moved to approve Mr. Douglass Fowler's application for reinstatement for as a Mechanical Engineer provided he take and pass the "take home" examination and pay current and delinquent renewal fees.

VOTE: 10-2, motion carried. Ms. Hoffman and Ms. Safran voted nay.

MOTION: Mr. Hopwood/Mr. Lazarian moved to approve Ms. Faudzilah Shafie's application for reinstatement as a Civil Engineer provided she take and pass the "take home" examination and pay current and delinquent renewal fees.

VOTE: 9-3, motion carried. Ms. Safran, Ms. Hoffman, and Ms. Powell voted nay.

MOTION: Mr. Lazarian/Mr. Hopwood moved to approve Mr. Sean O'Keefe's application for reinstatement as a Civil Engineer provided he take and pass the "take home" examination and pay current and delinquent renewal fees.

VOTE: 12-0, motion carried.

The Board directed staff that all delinquent applications will be reviewed by the enforcement staff to investigate whether or not the applicant was violating the Board laws and rules during the applicant's period of delinquency. The outcome of each investigation will be included in the recommendation for each reinstating application.

7. Comity and Temporary Authorization Applications

MOTION: Ms. Powell/Dr. Chen moved to approve the list of comity applications as provided as a handout replacing pages 41 and 42 of the agenda.

VOTE: 12-0, motion carried.

Action was delayed on the Comity applications as shown on pages 43 through 50 and were taken under consideration under President's Report, item 14.

8. Request for Declaratory Decision regarding Traffic Engineering

Mr. Duke reported on this item.

He stated that the Board received a letter dated December 15, 1999 from Ms. Eugenie Thomson asking for a declaratory decision from the Board related to the issue of the definition of Traffic and Civil Engineering. Mr. Duke stated he would not characterize the letter as a formal request for a declaratory decision.

Mr. Duke explained that Ms. Thomson's letter indicates a considerable amount of confusion as to what constitutes Civil Engineering and Traffic Engineering.

Mr. Duke explained the procedures for requesting and issuing a Declaratory Decision. A Declaratory Decision provides authority to the Board to issue a written opinion which makes a statement of undisputed or assumed facts and a determination of issues relating to the application of the state agency's rules and regulations, orders, or administrative decisions as it applies to a situation over which the agency has primary jurisdiction. A declaratory decision has the legal affect of binding the agency, applicant, and other parties to the proceeding. In a sense this is a dispute resolution. It does present a problem for a multi-member agency.

Mr. Duke stated that the OAH (Office of Administrative Hearings) promulgated regulations, which delineates the process and requirements for issuing a declaratory decision. The law provides that any person may file a written application for a request for issuance of a declaratory decision. There are certain informational requirements that are necessary in the application. To that extent, Ms. Thomson's letter does not meet the requirements of an application for issuance of a declaratory decision. However, the Board can solicit additional information from Ms. Thomson. Because Ms. Thomson's request is lacking a specific issue, it fails to meet the requirements. In addition, the application must state a good faith list of all interested persons, i.e., names, addresses, phone numbers. Again, in Ms. Thomson's request, it would require a listing of all licensed Traffic and Civil Engineers in California.

Mr. Duke stated the Board could do one of three things:

- 1) return the application (letter) for insufficient information;
- 2) request the applicant provide specific facts; and/or
- 3) select or eliminate certain facts of the request.

Mr. Duke stated that the Board needs more specific information, more facts, and a more precise statement from Ms. Thomson.

Mr. Duke stated that within 30 days of receipt of a formal request for a declaratory decision, if the application is not returned because it is not within the Board's jurisdiction, the Board must give notice to all persons who are required to be notified, by law. Once notice has been provided to all interested parties then the Board cannot make a decision until after a 45-day period. In addition, the Board must solicit comments from all parties. The Board may hold a hearing or may decide on the record.

In addition to all of the above, Mr. Duke stated that there are certain record keeping provisions that must be adhered to when processing a declaratory decision.

Mr. Duke stated that it is the discretion of the Board to not issue a declaratory decision. If the Board does not take action on an application for a request for a declaratory decision within 60 days of receipt, it constitutes nonacceptance of the application.

The Board would have to deny an application for a request for a declaratory decision if the request was not the jurisdiction of the Board, the issue of the request is also pending an administrative or judicial proceeding, or if it is determined that there are no undisputed facts of the interested parties. If the Board decides to deny the application, the Board must inform the applicant in writing.

Mr. Duke stated that he found no other agencies that have issued declaratory decisions within California.

Finally, Mr. Duke stated that he would not recommend going forward with any proceeding with respect to Ms. Thomson's request. The Board may decide to ask Ms. Thomson for additional information before they make any decisions with respect to issuing a declaratory decision.

Mr. Fairfield stated he felt Ms. Thomson's letter addressed a valid question. He also stated that this issue should be addressed after the Board reviews the issue of the Title Acts and engineering overlap.

At the request of the Board, Ms. Christenson will work with Mr. Duke and Mr. Lazarian in drafting a response to Ms. Thomson's request. The response will state that the Board is denying her request for a declaratory decision until the Board concludes its study of the title act disciplines and the issue of engineering work overlap.

9. 2000 Board Strategic Plan

Ms. Christenson went over the changes and additions to the 2000 Strategic Plan. The Board requested that changes be made to better identify the strategic plan as follows:

- creation of the new intranet system for employees;

- purchase of a binding machine;
- review of negligence and incompetence in relation to administrative discipline;
- review of the Structural examination;
- drafting legislation to give authority for a code of professional conduct and written contracts;
- changing dates of the anticipated completion dates for specific implementation of plans

In addition, Ms. Christenson indicated that Objective 5.7 be moved to Goal 6 (Legislative), and Objective 5.8 to Goal 4 (Examinations/Qualifications).

Ms. Hoffman requested that the summary include “on hold” or pending issues for the year 2000.

Ms. Christenson will revise the draft strategic plan and the Board will review it at the April 2000 Board meeting.

10. Approval and Adoption of Amendments to Board Rule 411 (Seal and Signature)

Ms. Eissler reported on this item.

The Board received comments suggesting that changes be made to the proposed amendments to Board Rule 411 (Seal and Signature). In addition, a public hearing was held to comment on the amendments to the rule. As a result, staff recommended the changes shown on pages 79 and 80 of the agenda package.

Dr. Brandow requested that Professional Engineer be added to subsection (a)(1).

Mr. Fairfield requested that we do not remove the previous language in subsection (f).

Mr. DiTomaso requested that the rule require a date entry adjacent to signature(s).

Ms. Eissler will make some additional changes based on the comments of the Board and have it reviewed by Mr. Duke, Dr. Brandow and Mr. Fairfield. These changes will come back to the April Board meeting for approval. Ms. Eissler advised the Board that these changes will require a 15-day public comment period.

11. Approval of Regulation Language for Retired Status

Mr. Schunke reported on this item. Mr. Schunke will add the appropriate Business and Professions Codes as noted on the bottom of the regulation.

Mr. Fairfield requested that the regulation should state the retired application fee is for each license and is a one-time fee. Mr. Schunke will make requested changes.

MOTION: Mr. Hopwood/Ms. Powell moved to approve the amendment to regulation 407 with above changes.

VOTE: 12-0 motion carried.

12. Technical Advisory Committee Reports

a. Land Surveying

1. Report on the February 4, 2000 Committee Meeting

President Shambeck reported on the February 4, 2000 Committee meeting.

2. Approval of the Draft Public Information Brochure Explaining Geographic Information Systems (GIS)

Ms. Powell requested that the brochure define the word "geodetic" as shown on Page 91, paragraph 2 of the agenda package. Ms. Powell requested that after the words "topographic mapping," as shown on page 91, paragraph 5, parentheses be used as the following phrase defines topographic mapping. Ms. Powell requested that the brochure include the Board's phone number, internet website and mailing address.

MOTION: Mr. Fairfield/Mr. DiTomaso moved to approve the GIS brochure for publication and have the Board's legal counsel review the GIS brochure with above changes.

VOTE: 12-0, motion carried.

b. Civil/Geotechnical Engineering

1. Report on the January 18, 2000 Committee Meeting

Mr. Fairfield reported on the January 18, 2000 Committee Meeting.

c. Mechanical/Electrical Engineering

1. Report on the January 13, 2000 Committee Meeting

Mr. Vu and Mr. DiTomaso reported on the January 13, 2000 Committee Meeting. Mr. Vu requested to have Mr. Duke present at the March 23, 2000 ME/EE Committee Meeting to provide input on the definition on "public utility."

d. Structural Engineering meeting (No meeting held)

13. Liaison Reports

a. ABET

At the request of President Shambeck, Mr. Stout gave an ABET update. ABET voted on the revised constitution of USCIEP (United States Council for International Practice). There were two changes: a provision for additional members, and a definition of a dissolution procedure. Mr. Stout also reported that the Computer Science Accreditation Board will be merging into ABET.

- b. NCEES
 - 1. May Western Zone Meeting
 - 2. Distinguished Service Awards

Ms. Christenson reported that President Shambeck, Dr. Brandow, Vice-President Hoffman, and Ms. Christenson will be attending the May 18-20, 2000 Western Zone Meeting in Grand Junction, Colorado. Mr. Fairfield will be attending as the Western Zone Vice-President.

Mr. Fairfield reported that three items of importance that will be discussed at the Western Zone Meeting are:

- 1) Mobility issues
- 2) Constitutional by-laws
- 3) LGR issue (contract for examinations with NCEES and state boards)

Ms. Christenson asked that any Board members who are interested in participating as a committee member at the NCEES level inform Mr. Fairfield.

Mr. Fairfield reported that Wyoming Board members are being nominated for Distinguished Service Awards.

- c. International Relations

Mr. Lazarian stated that this item is no longer necessary on the Board's agenda. This item will be removed from future agendas.

- d. Technical and Professional Societies

Dr. Brandow reported that SEAOC agreed with the Board's proposal to use the NCEES 8-hour Structural examination along with a state-specific examination.

14. President's Report

President Shambeck reported that he spoke at the CSLA Annual Convention in Las Vegas, Nevada.

7. Comity and Temporary Authorizations

MOTION: Ms. Powell/Dr. Chen moved to approve the comity applications as shown on pages 43 through 50.

VOTE: 12-0, motion carried

15. Executive Officer's Report

1. Fiscal Report

a. Executive Summary Report

Ms. Christenson reported that there is a change to the Executive Summary Report. The report now includes a statistical summary of the Board's Website usage. This report will be included in all future summary reports on a monthly basis. Ms. Christenson reported that DCA has indicated our site is the third highest visited site of all websites of the Department.

2. Personnel

a. New Hires

Ms. Christenson reported that the office has hired a student assistant, Carly Moore, Jackie Barclay's daughter. Carly is a senior in high school and is assisting with clerical duties.

3. Enforcement/Examinations/Licensing

a. Update

Ms. Christenson reported that Board staff is preparing for the April 2000 examination. There are five examination sites: Pomona, San Diego, San Mateo, Sacramento, and Tulare.

b. Cite and Fine Summary Report

Ms. Christenson requested input from all Board members regarding the statistical summary regarding the Citation and Fine Program.

Ms. Eissler reported that cite and fine cases that result in noncompliance can be reported to the Franchise Tax Board for intercept of tax refunds. Also, there may be a change in the format of the statistical summary during the year.

Mr. Lazarian requested that the statistical summary include cases where there is no citation issued (such as compliance cases) to show effectiveness of the program.

Ms. Eissler agreed that many cases are resolved and do not result in a citation.

4. Publications/Website

Ms. Christenson reported that Diane Barbosa, Board Publications Analyst, is working on the publication for 2000 Board Laws and Rules and the 2000 Roster.

5. Other -

a. DCA update

Ms. Christenson reported that Derry Knight, Deputy Director of the Legal Office, resigned on February 8, 2000. Don Chang will be the interim replacement. A new DCA Legislative Deputy Director, Sailaja Cherukeri, was appointed.

b. Board Member Forums

Ms. Christenson reported that all Board member should have received information on the upcoming Board Member forums.

Ms. Christenson reported that the DCA would provide input to the JLSRC by March 15, 2000. There is a tentative hearing set for March 28 for our Board to respond to the Department's comments. The final recommendation deadline to the Senate Committee is April 11, 2000.

Dr. Chen left the meeting at 12:50 p.m.

16. Committee Reports

a. Administrative

Mr. DiTomaso reported on the February 24, 2000 Committee meeting.

Mr. Foley and Mr. Hopwood will assist staff in developing the Title Act RFP.

c. Enforcement

Mr. Foley reported on the February 24, 2000 Committee meeting.

MOTION: Mr. Hopwood/Ms. Safran moved to adopt the Board policy regarding Board Member Review of Closed Complaint cases.

Mr. Lazarian recommended that the policy not require that both sub-committee members be in attendance at the same time. Ms. Eissler will make the recommended changes. Ms. Eissler will also change the adopted date to February 2000.

VOTE: 11-0, motion carried.

b. Examinations/Qualifications

Ms. Safran reported on the February 24, 2000 Committee meeting.

2. Proposal from Cooperative Personnel Services to Develop the Occupational; Analysis and Test Plan for the Geotechnical Engineering Examination.

MOTION: Mr. Fairfield/Mr. Vu moved to approve that Julie Campbell-Warnock, Board Analyst, head the development efforts for the Occupational Analysis and Test Plan for the Geotechnical examination.

VOTE: 11-0, motion carried

3. Request for Proposal (RFP) to Obtain an Independent Consultant to Evaluate the Examination Development Process for the Professional Land Surveyor Examination.

MOTION: Mr. Vu/Mr. Hopwood moved to hire a consultant to evaluate the current methodologies and process for developing the Professional Land Surveying examination and evaluate the content of the current Professional Land Surveyor examination and evaluate the education and experience requirements for the Professional Land Surveying candidates.

VOTE: 11-0, motion carried

Mr. Shambeck stated that at the December 1999 Board meeting the Board approved use of the NCEES PLS examination in 2001. Mr. Shambeck stated that he does not believe that this is possible to achieve due to the work required for the above.

Mr. Shambeck stated that using only the NCEES PLS examination is not going to assist in the licensing of comity applicants. This will only reduce the length of California PLS specific examination. Mr. Shambeck stated that the NCEES PLS examination is not adequate for use in California to protect the public welfare. Since the Fundamentals of Land Surveying examination has been changed, we may be able to utilize the NCEES PLS examination, and use only the essay portion of the California specific PLS examination.

Mr. Shambeck stated that most states have an 8-year experience requirement prior to taking the PLS examination. The NCEES model law requires a 4-year degree in surveying and 4 additional years of experience. Ten other states are now requiring that PLS examinees have a 4-year degree in Land Surveying. As a result, gaining comity will be an issue.

Mr. Shambeck stated that CLSA is introducing legislation that would require either a 4-year degree and 2 years experience or 8 years of experience. This does not address the problem with comity for Professional Land Surveyors.

Mr. Fairfield stated that the same problem exists with Professional Engineers.

Mr. Vu stated that he is in favor in changing our requirements to be consistent with other states. He also stated that other comity applicants are having similar problems.

Ms. Christenson recommended that the Board wait until after the independent review of the PLS examination and experience and education of the PLS applicants prior to taking any action on this issue.

c. Legislative

Dr. Brandow reported on the February 24, 2000 Committee meeting.

3. Proposed Legislation for 2000

MOTION: Mr. Hopwood/Ms. Safran moved to support and seek amendments for SB 1536 and defer to DCA on SB 1310.

VOTE: 11-0, motion carried.

17. Approval of Board Travel

No travel to approve.

18. Other items Not Requiring Board Action

Mr. Shambeck requested that a survey and task analysis of the PLS examination be added to the April 6 Examination/Qualifications agenda.

The next Board meeting is scheduled for April 6 and 7, 2000 at the Monterey Hyatt in Monterey, California

19. The Board adjourned at 1:23 p.m.